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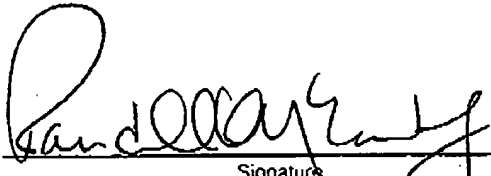
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>STL11224</b>							
I hereby certify that, on the date shown below, this correspondence is being facsimile transmitted to the Patent and Trademark Office, (571) 273-8300. 37 CFR §1.8(a) on <u>May 5, 2006</u> Signature <u>Diana C. Anderson</u> Typed or printed name <u>Diana C. Anderson</u>		<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">Application Number <b>10/600,955</b></td> <td style="width: 50%; padding: 5px;">Filed <b>June 20, 2003</b></td> </tr> <tr> <td colspan="2" style="padding: 5px;">First Named Inventor <b>Apurva Dolatrai Naik</b></td> </tr> <tr> <td style="padding: 5px;">Art Unit <b>2627</b></td> <td style="padding: 5px;">Examiner <b>Andrew Sniezek</b></td> </tr> </table>		Application Number <b>10/600,955</b>	Filed <b>June 20, 2003</b>	First Named Inventor <b>Apurva Dolatrai Naik</b>		Art Unit <b>2627</b>	Examiner <b>Andrew Sniezek</b>
Application Number <b>10/600,955</b>	Filed <b>June 20, 2003</b>								
First Named Inventor <b>Apurva Dolatrai Naik</b>									
Art Unit <b>2627</b>	Examiner <b>Andrew Sniezek</b>								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).            Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input type="checkbox"/> attorney or agent of record. Registration number _____ <input checked="" type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 <u>39,297</u>		<div style="text-align: center;">               Signature  <u>Randall K. McCarthy</u>              Typed or printed name  <u>(405) 232-0621</u>              Telephone number  <u>5/5/06</u>              Date           </div>							
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.</p>									
<input type="checkbox"/> Total of <u>1</u> forms are submitted.									

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PATENT  
Dkt. STL11224

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Apurva Dolatrai Naik  
Assignee: SEAGATE TECHNOLOGY LLC  
Application No.: 10/600,955 Group Art: 2627  
Filed: June 20, 2003 Examiner: Andrew L. Sniezek  
For: TIME LINEAR ARRIVAL FOR VELOCITY MODE SEEKS

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

ACCOMPANYING ARGUMENTS FOR PRE-APPEAL  
BRIEF REQUEST FOR REVIEW

Sir:

This paper constitutes accompanying arguments for a pre-appeal brief request for review for the above identified U.S. patent application. A Notice of Appeal and a Pre-Appeal Brief Request for Review have been filed herewith.

Present Status of Claims

Claims 1-13 are pending in the application. Of these claims:

1. Claims 1-11 stand finally rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,850,386 issued to Kovinskaya et al. ("Kovinskaya '386"); and

## CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a)

I hereby certify that, on the date shown below, this correspondence is being:

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Diana C. Anderson  
Signature

Date: May 5, 2006

Diana C. Anderson  
(type or print name of person certifying)

2. Claims 12-13 stand finally rejected under §102(e) as being anticipated by U.S. Patent No. 6,594,105 to Brittner ("Brittner '105").

No post-final amendments to the claims have been requested.

#### **Claim Language at Issue**

In claim 1, the language "*wherein the reference velocity is based on a function that causes a first derivative with respect to time of the reference velocity to vary linearly with respect to time*" is generally at issue with regard to the Kovinskaya '386 rejection.

In claim 12, the language "*wherein the reference velocity is determined in accordance with a function that causes a first derivative with respect to time of the reference velocity to vary linearly with respect to time*" is generally at issue with regard to the Brittner '105 rejection.

#### **Summary of Arguments in Favor of Patentability**

The Applicant respectfully submits that the case is not ripe for appeal on the basis of clear legal and factual error on the part of the Examiner. This can be demonstrated by the following points.

#### **1. The final rejection of claim 1 is based on an interpretation of the drawings of Kovinskaya '386 that directly contradicts the specification.**

- a. In the final Office Action, the Examiner relied on acceleration curve 140 in FIG. 3 of Kovinskaya '386 to sustain the final rejection of claim 1. See final Office Action, p. 4, lines 15-18.
- b. Kovinskaya '386 explicitly discloses that the acceleration curve 140 of FIG. 3 is a third-order polynomial function with respect to time. This function is set forth by equation (5) therein, and includes  $t^3$ ,  $t^2$  and  $t^1$  terms (time= $t$ ). See Applicant's Response filed April 6, 2006, p. 6, lines 11-23; Kovinskaya '386, col. 4, lines 55-56; col. 5, line 40.
- c. A skilled artisan would readily view the third-order function of curve 140 in Kovinskaya '386 as varying non-linearly with respect to time as a result of

the non-linear  $t^3$  and  $t^2$  terms. The Examiner has provided no discussion as to how, or under what circumstances, the function could be transformed to “vary linearly” as claimed.

- d. Instead, the Examiner has based the rejection on physical observation of curve 140 in FIG. 3, and has pronounced the curve sufficiently “straight” to meet the language of claim 1. (*“As seen from FIG. 3, the acceleration (first derivative of the velocity) does vary linearly.”* – final Office Action, page 4, lines 17-18, emphasis added). It is not clear whether a straight-edge ruler was used in this determination.
- e. Regardless, this constitutes reversible error on the part of the Examiner. Anticipation of claim terms cannot be shown by interpreting patent drawings in such a way as to contradict the associated disclosure in the specification. See *Nystrom v. TREX Co.*, 76 USPQ2d 1481 (Fed Cir. 2005) (reversible error to base an anticipation finding on patent drawings not explicitly made to scale); *Hockerson-Halberstadt Inc. v. Avia Group International Inc.*, 222 F.3d 951 (Fed. Cir. 2000) (patent drawings may not be relied on to disclose particular features if the specification does not support this interpretation); *In re Wright*, 569 F.2d 1124, 1127 (CCPA 1977)(arguments based on measurements of a drawing “are of little value” absent corresponding disclosure in the specification to support such measurements).
- f. The specification in Kovinskaya ‘386 describes the curves in FIG. 3 as being general representations of a class of control curves, and are explicitly not drawn “to scale.” See col. 3, lines 42-44 (*“FIG. 3 is a series of control profiles that generally describe jerk, acceleration (force), velocity and displacement”*); col. 4, lines 43-46 (*FIG. 3 provides a generalized family of profiles to describe operation of the servo control circuit”*).
- g. Kovinskaya ‘386 further provides the underlying mathematical equations for the curves, such as equation (5). This conclusively shows that the claimed subject matter of claim 1 is not met by these generalized curves, and no amount of visual inspection of curve 140 will avail to prove otherwise.
- h. The anticipation rejection of claim 1-11 in view of Kovinskaya ‘386 is therefore erroneous as a *matter of law*.

**2. The final rejection of claim 12 is based on an improper factual characterization of the disclosure of Brittner '105.**

- a. In the final Office Action, the Examiner sustained the final rejection of claim 12 on the basis of language in Brittner '105 that indicates there are no non-linear terms in the acceleration equation. See final Office Action, page 4, lines 19-21 ("*there are no non-linear terms.*"); Brittner '105, col. 6, line 40.
- b. Brittner '105 discloses to combine an exponential acceleration component with a constant acceleration component to derive a servo acceleration signal. See Brittner '105, col. 3, lines 56-58; col. 6, lines 21-22; col. 7, lines 6-10; and FIG. 4; see also Applicant's Response of April 6, 2006, p. 8, lines 13-19.
- c. The skilled artisan would readily view each of these components, both individually and in combination, as not varying linearly with respect to time. An exponential function clearly varies exponentially, and a linear function does not vary at all. Applicant's Response of April 6, 2006, p. 9, lines 3-8.
- d. Nevertheless, the Examiner has focused on disclosure in Brittner '105 that provides the use of linear equations to allow calculations to take place in real time. Col. 6, lines 37-40; col. 7, lines 4-5; col. 7, lines 37-39.
- e. The skilled artisan would readily understand that linear equations can be used for calculations involving non-linear functions as a means for simplifying the computational load. However, the fact that linear equations are used by Brittner '105 does not transform the function disclosed in Brittner '105 into a function "that var[ies] linearly with respect to time" as claimed.
- f. As previously pointed out by the Applicant, the Examiner has confused the phrase "there are no non-linear terms" which does not appear in claim 12, with the phrase "vary linearly with respect to time" which does appear in claim 12. These phrases describe different characteristics and while Brittner '105 may disclose the first, it clearly does not disclose the second. See Applicant's Response filed April 6, 2006, page 8, lines 1-12.
- g. The rejection of claims 12-13 as being anticipated by Brittner '105 is therefore improper and constitutes reversible error.

Thus, the case is not ripe for appeal as the final rejection is without basis on the following grounds:

1. Clear legal and factual error exists with regard to the anticipation rejection of claims 1-11; and
2. Clear legal and factual error exists with regard to the anticipation rejection of claims 12-13.

Reconsideration of the final rejection and allowance of all pending claims 1-13 are therefore respectfully solicited.

Respectfully submitted,

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